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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/839,562	04/20/2001	Troy Wilford	8932-268	1273
20583	7590	12/13/2004	EXAMINER	
JONES DAY 222 EAST 41ST ST NEW YORK, NY 10017			ODLAND, KATHRYN P	
			ART UNIT	PAPER NUMBER
			3743	

DATE MAILED: 12/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 09/839,562	Applicant(s) WILFORD, TROY	
	Examiner Kathryn Odland	Art Unit 3743	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 04 October 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-27 and 29-32 is/are pending in the application.
- 4a) Of the above claim(s) 2, 4, 6, 16, 21-24, and 29-32 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 3, 5, 7-15, 17-20 and 25-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Response to Arguments*

1. This is a response to the arguments dated October 4, 2004. Claims 1, 3, 5, 7-15, 17-20 and 25-27 are under consideration. Claims 2, 4, 6, 16, 21-24, and 29-32 are withdrawn from consideration.

2. Applicant's arguments filed October 4, 2004, with respect to the rejection(s) of claim(s) 1 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Goble et al. in US Patent No. 5,931,840.

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 1, 7-11, 17-20 and 25 are rejected under 35 U.S.C. 102(e) as being anticipated by Goble et al. in US Patent No. 5,931,840.

Regarding claim 1, Goble et al. disclose a fixation device (generally at 10), as seen in figures 1-5, for securing one end of a graft to bone. The device has an implant body (generally @13) with first and second ends. The first end has an opening (such as 17) configured and adapted for receiving an insertion tool, as recited in columns 7-8, with emphasis on column 7, lines 30-35 and 60-65 as well as column 8, lines 60-68.

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Column 7, lines 66-67 recite, "Preferably, the proximal cavity 17, as set out above, is sided at 25, to receive the turning tool fitted therein, and to later receive the turning tool for adjusting ligament tensioning..." Applicant is also directed to column 8, lines 60-68, which states the installation via the cavity 17. Further, the implant body (generally @13) has a second end that has a recess (such as 15) and a graft interface member (11) having a graft holding portion (generally @ 27) and an implant coupling portion (generally @ 18), at least a portion of the coupling portion is configured and adapted to be received in the recess to permit the implant body to rotate independent of the graft interface member. Further, the implant-coupling portion has a snap-fit type connection and the graft holding portion has a central longitudinal axis and is configured and adapted to hold a graft aligned with the central longitudinal axis, as recited in columns 6-8 and seen in the figures.

Regarding claim 7, Goble et al. disclose that as applied to claim 1, as well as, a coupling portion with a flexible post (defined by slots 21), as recited in column 7.

Regarding claim 8, Goble et al. disclose that as applied to claim 7, as well as, a flexible post that has a flared tip portion (@ 18a and 19), as seen in figure 1.

Regarding claim 9, Goble et al. disclose that as applied to claim 8, as well as, a flared tip portion that is slotted (@ 21), as seen in figure 1.

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Regarding claim 10, Goble et al. disclose that as applied to claim 1, as well as, a recess in the second opposed end that has an undercut section, as seen in figures 1 and 3A-3C.

Regarding claim 11, Goble et al. disclose that as applied to claim 1, as well as, an implant body and a graft interface that are integrally connected to each other, as seen in figures 1-3C.

Regarding claim 17, Goble et al. disclose that as applied to claim 1, as well as a first opening that is hexagonal, as recited in columns 7-8, with emphasis on column 7, lines 30-33.

Regarding claims 18 and 19, Goble et al. disclose that as applied to claim 1, as well as an internally threaded implant, as recited in columns 7-8.

Regarding claim 20, Goble et al. disclose that as applied to claim 1, as well as, an implant body (13) that has an outer surface that at least a portion of which has threads (16) for implantation into bone, as seen in figure 1.

Regarding claim 25, Goble et al. disclose that as applied to claim 1, as well as, an implant coupling portion (generally @ 18) that is received in the recess from the second end of the implant, as seen in figure 1-3C.

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***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

4. Claims 3, 5, 12-15 and 26-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goble et al in US Patent No. 5,931,840 in view of Papay et al. in US Patent No. 6,517,542.

Regarding claim 3, Goble et al. disclose that as applied to claim 1. However, Goble et al. do not explicitly recite a graft holding portion that is a cage. On the other hand, Papay et al. teach a cage structure as seen in figures 15-16, for example. Thus, it would be obvious to one with ordinary skill in the art to modify the structure of Goble et al. to include a cage as taught by Papay et al. for the purpose of enhanced graft placement and securing ability.

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Regarding claim 5, Goble et al. as modified disclose that as applied to claim 3, as well as, Papay et al. further teach a cage that has a cage bottom portion and a cage top portion **attachable** to the cage bottom portion, as seen in figures 15-19. Thus, in the modification, it would further be obvious to have the bottom and top portion be attachable.

Regarding claim 12, Goble et al. as modified disclose that as applied to claim 5, as well as, it is within the scope of the modification and would further be obvious to have a cage top that has at least one detent configured and adapted to attached the cage top portion to the cage bottom portion.

Regarding claim 13, Goble et al. as modified disclose that as applied to claim 12, as well as, it is within the scope of the modification and would further be obvious to have a cage bottom portion that has at least one fitting configured and adapted to receive the detent.

Regarding claim 14, Goble et al. as modified disclose that as applied to claim 5, as well as, it is within the scope of the modification and would further be obvious to have a bone cage that has at least one wall portion and the at least one opening through the at least one wall portion.

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Regarding claim 15, Goble et al. as modified disclose that as applied to claim 14, as well as, as well as it is within the scope of the modification and would further be obvious to have a wall portion that has an interior surface having serrations, via the snap fit components.

Regarding claim 26, Goble et al. disclose that as applied to claim 1. However, Goble et al. do not explicitly recite a graft holding portion that is a cage having at least two separate members, wherein the snap-fit connection defines at least two members and the inside bore is considered part of the cage when in engagement. On the other hand, Papay et al. teach a cage structure as seen in figures 15-16, for example. Thus, it would be obvious to one with ordinary skill in the art to modify the structure of Goble et al. to include a cage as taught by Papay et al. for the purpose of enhanced graft placement and securing ability. In this modification, it would be further obvious and within the scope to have a snap-fit connection defines at least two members and the inside bore is considered part of the cage when in engagement.

Regarding claim 27, Goble et al. as modified disclose that as applied to claim 26, as well as, a cage having first and second members that mate is within the scope of the modification.



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**Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kathryn Odland whose telephone number is (571) 272-4801. The examiner can normally be reached on M-F (7:30-5:00) First Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry A Bennett can be reached on (571) 272-4791. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

KO



Henry Bennett  
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